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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,091	06/15/2001	Kiril A. Pandelisev	PHOENIX SCIENTIFIC	7262

7590 07/19/2004

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EXAMINER	
HOFFMANN, JOHN M	

ART UNIT	PAPER NUMBER
1731	

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.

EXAMINER	
ART UNIT	PAPER
	40621

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Commissioner for Patents

The reply filed on 2 June 2004 is not fully responsive to the prior Office Action because: it fails to provide a proper response to the Office action of 9/24/03 (see below). Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).
The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

Furthermore the response(s) fails to include a complete or accurate record of the substance of the 27 April 2004 interview. None has been filed. See MPEP 713.04.

Applicant is correct: Applicant can still petition the original election requirement.

In the response of 2 April 2004 it is argued: The applicant has not changed claim 65 to take it outside any elected species. The communication from the Office (mailed on 2/23/04) points out why the previous addition to claim 65 has been amended to outside the scope of the elected invention. Applicant has failed to clearly and distinctly point out what the error was in the determination by the Office. Whereas it is clear that Applicant disagrees with the determination, it is unclear what the supposed error is.
However, Examiner guesses that the supposed error is: Whereas tradition MCVD (such as the Abe MCVD) does not have directing of particles, the Office erred in determining that Applicant's invention does encompass MCVD with directing of particles. This is not an error. First it is noted that terms are given there ordinary and customary meanings, unless otherwise defined in the specification. There is no definition for MCVD in the specification, thus the ordinary definition is how the term MCVD is intrepretted in the present application. For example, Abe and Miller 3966446 (col. 2, lines 26-44) indicate what is meant by MCVD: namely, an external heat source heat reactant gases to form soot particle inside a tube, and then the soot particles deposit on the inside surface. One of ordinary skill would not interpret MCVD to encompass using jet streams of particles (page 2, lines 3-4) of the specification.
Applicant further points to examined claim 73 which refers to directing particles. Examiner considered the "directing" broadly – to the extent that it encompassed the passive directing of the particles due to gravity. However, now that Applicant has indicated that Abe's settling of particles to not be a directing of particles, Examiner does not consider such passive depositing to be a "directing" of particles. But more importantly, Applicant is now bound to exclude passive settling of particles from the claims. One cannot have a broad scope for "settling" when interpreting what claims read on the elected invention, but a different narrow scope when comparing the prior art.
Furthermore, claim 73 refers to "the directing" but there is no antecedent basis for that term. The broadest reasonable interpretation of

the claim would have been to interpret "the directing" claim 73 to be the same scope as the "collecting" of claim 65. The only other reasonable interpretation would be that the error was the collecting of claim 65 should have been "directing" – but this is narrower in scope. Since Office uses the broadest reasonable interpretation, claim 73 would be interpreted to refer to collecting rather than directing.
MOST IMPORTANTLY, in the paper of 9/8/03, applicant indicated which claims read on the elected invention – claim 73 was not included as reading on the elected invention (see page 2 of that paper). It is not reasonable to now indicate that the directing of claim 73 now does read on the elected species.

Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).
The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

John Hoffmann
Primary Examiner
Art Unit: 1731

6-22-04